

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 19

No. 82-5754

ROLF BETKA, Appellant,

vs.

STATE OF OREGON; Richard B. Spooner; Howard Clyman, Douglas S. Robertson; Garry R. Olson; BOARD OF EDUCATION OF WEST LINN SCHOOL DISTRICT NO. 3J; and Larry G. Hibbard,

Appellees.

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APPEAL FROM

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

OF ROLF BETKA, IN PRO PER  
19886 S. White Cloud Circle  
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15 INDEX OF AUTHORITIES

17 Cases: listed on page 2,3 and 4 under Grounds of Jurisdiction of SCt.

18 Statutes:

19     Title 28-1331, 28-1343, 42-1981, 42-1982, 42-1983, 42-1985, 42-1986  
20     Civil Rights Acts of 1866, 1871, 1964 section 601 et seq.  
21     1968, 42-2000a 1, Civil Rights Attorney Award Act of 1976,  
22     and Community Service Act of 1974 42-2981 USCA

23 Other Authorities:

24     see page 2 of Jurisdictional Statement listing ORS 337.120 in full  
25     and excerpt of ORS 337.260

## JURISDICTIONAL STATEMENT

3 Pursuant to Rules 13(2) and 15 of the Rules of the Supreme  
4 Court of the United States, appellant, Rolf Betka, files this  
5 statement on the basis upon which it is contended that the Supreme Court  
6 of the United States has jurisdiction to review the order entered by  
7 United States Court of Appeals for the ninth Circuit in this case and  
8 should exercise such jurisdiction herein.

OPINIONS BELOW

11 The opinion for dismissing the action was based on FIND & RECOM.  
12 of U.S. Magistrate (CR 47 & 76) contested by appellant as being clearly  
13 erroneous and contrary to law. Plaintiff-appellant objected with (CR 77  
14 & 78) and was overruled by actions constituting suppression of evidence.  
15 Appellant has filed Criminal Complaint and Affidavit with US Attorney  
16 Turner for certification and inditement. Charges include violations  
17 under 18-1503 against Distr. Court Clerks conspiring with defendants  
18 in this case and case 81-866 AC 82-3474 and 81-425 AC 81-3613.

23 before the Court of Appeals.  
24 The order denying Motion for Rehearing of August 20, 1982 from which  
25 appellant is appealing is recognizing two out of six Postjudgment  
Orders and is denying on account of not having posted cost bond.

1 Appellant has filed Motion for Review of Fact Finding Proceedings  
2 in Distr. Court under FRCP Rule 60(b)(6) and 59(a) with notice to  
3 the Court of Appeals

4

5 GROUNDS OF JURISDICTION OF SUPREME COURT

---

6

7 This appeal arises from an action to redress depriviations of  
8 civil rights and recover damages. The order denying rehearing and  
9 issuing mandate of the Court of Appeals for the 9th Circ. was entered  
10 on August 20, 1982. A timely notice of appeal was filed on Sept 17, 1982  
11 in the Court of Appeals. The jurisdiction of this Court is invoked  
12 under the provisions of Title 28-1252 United States Code.

13 Cases that sustain the jurisdiction of this Court include:

14 419 U.S. 379, 95 Sct 1340 - Fusali v. Steinberg  
(Action brought pursuant to 1983 brings the whole case before the  
15 Supreme Court under 28-1252 as well as under 28-1253)

16 417 U.S. 733, 41 L Ed2nd 439, 94 Sct 2547  
(Appeal from "any court" includes Court of Appeals)

17 331 U.S. 100, 91 LEd 1368, 67 Sct 1140 - Fleming v. Rhodes  
(Appeal from decision holding Act of Congress unconstitutional  
18 as applied)

19 ORS 337.120 SCHOOLBOARD SELECTION, PURCHASE AND USE OF APPROVED  
20 TEXTBOOKS AND INSTRUCTIONAL MATERIAL (1) Except as otherwise provided  
21 by ORS 337.141, the district schoolboard, with the assistance of  
22 teachers and administrators of the district, shall select textbooks  
and other instructional materials for each grade and subject field  
from the multiple choice approved list. The district school board may  
involve citizens in the process.

23 Instructional material are not textbooks according to Opinion of  
24 Attorney General of the State of Oregon.

25 ORS 337.260 is providing that TEXTBOOKS should reflect respect for all  
people, regardless of race, color, creed, national origin, age sex  
or handicap (Instr. material as applied denied plaintiff the respect  
2 - Jurisdictional statement provided under "Textbooks"

1 Colaizzi v. Walker (1976) 430 U.S. 960, 51 LEd 2nd 811, 542 F2nd 969  
2 ~~infliction of stigma in conjunction with deprivation of property~~  
3 is actionable under 42-1983)

3 Paul v. Davis 424 U.S. 701, 96 Sct 1160 (holding the same as above)

4 McCord v. Bailey (1980) AppDC 636 F2nd 606

5 ~~Action under 42-1985(2) Atty in conspiracy dissuading client not to~~  
6 issue with perjury and false evidence. No need to show "state action"  
7 or class based invidious discrimination.)

8 Orr v. Orr 1979, 99 Sct 1102, 1114, 440 US 268, 59 LEd 2nd 306  
9 on remand on Civ. App. 374 So. 2nd 895, writ denied Supp 374 So. 2nd  
898, and in which appeal is dismissed and cert. denied 100 Sct 993,  
444 U.S. 1060, 62 LEd2nd 738 (held invalid that husbands but not wifes  
could be held liable in divorce.)

10 Whitefield v. Ohio (1936) 297 U.S. 431, 80 LEd 778, 56 Sct 532, 5 Ohio  
11 ~~Ups 121 (Constitutional question not raised in trial court but considered~~  
by State Appellate Court falls under jurisdiction of Sct.)

12 Berg v. FCC 672 F2nd 892

13 ~~German-American group in solidarity with appellants peacefull action~~  
14 ~~in speech and demonstration was denied equal right to counter "Holocaust"~~  
15 ~~halftruth promoted by schools and massmedia over last 40 years -~~  
16 ~~German-American group as well as appellant is not "Nazi" oriented.)~~

17 Studies by appellant revealed that american Naziparty is product of  
18 Jewish interest group in Skokie, Ill to install with help of Jewish  
19 Defense League State harassment laws after targeted provocation and to  
20 silence any critizism of "Holocaust" for the benefit of Israel.

21 U.S. v. Holy Trinity U.S. CC N.Y. 36 F 303 rev. 12 Sct 511, 143 U.S.  
22 457, 36 LEd 226

23 ~~(U.S. is christian Nation with liberty and freedom of conscience for all)~~

24 State v. Scheffel (1973) 82 Wash. 2nd 872, 514 P2nd 1052 app. dism. 416  
25 U.S. 964, 40 LEd2nd 554, 94 Sct 1984  
26 (Bill of Attainder - legis. act to inflict punishment on group or indiv.  
without judicial trial)

27 Carey v. Population Serv. Intl. 431 U.S. 678, 52 LEd2nd 675, 97 Sct 2010

28 Pierce v. Society of Sisters 268 U.S. 510, 535 (1925)

29 Meyer v. Nebraska, 262 U.S. 390, 399 (1923)

30 ~~(liberty and right of parents over that of state and above efforts~~  
31 ~~of "Americanisation" of foreign born population)~~

1      Bell v. Hood, (1946) 327 U.S. 678, 90 LEd 939, 66 SCt 773  
2      (Deprivations of liberties without due process in violation of 5th  
and 14th Amendtmt.)

3      Murray v. Curlett, 374 U.S. 203, 10 LEd 2nd 844, 83 SCt 1560  
State not allowed to establish a religion of secularism)

4      Sherbert v. Verner, 374 US 398, 10 LEd 2nd 965, 83 SCt 1790, U.S. Const.  
5      I, 14 (Placing conditions on liberties of religion and expression is  
infringement on 1st.)

6      Citizens conc. for separation of church and state v. Denver (1981)  
7      (Plaintiff has standing in action dealing with religion and government  
under 1st Amendtmt)

10      QUESTIONS PRESENTED

11      1) Wheather appellant is entitled under the law as it was held in  
12      Livas v. Teledyne Movable Offshore, Inc. 28 FR Serv. 2nd 590, 607 F2nd  
13      118 CAS (1979)  
14      that objections made or not made to the findings of the master have  
15      no bearing on the obligation of the Court to determine the masters  
16      findings and to find that the master was clearly erroneous.

17      2) Wheather appellant is entitled under law and principal of justice  
18      to have the Certificate of Record on Appeal be transmitted in a state  
19      which reflects the truth and if omissions and misstatements are dis-  
20      covered and reported to the Court of Appeals under FRAP 10(e) wheather  
21      the Court of Appeals has the duty to direct the Clerk of the District  
22      and not a Judge of the District Court to correct the Clerks Certificate.  
23      for the purpose to issue order to post cost bond first before correction  
24      is made.

1 Plaintiff had initiated in the Court of Appeals under FRAP 10c proceeding  
2 to include Statement of Proceeding for May 26, 1981 hearing for which  
3 no transcript was available and which was not entered on the docket  
4 sheet of the Clerk. This was discovered in December of 1981 and appellant  
5 at that time discovered and recollected that the Clerk has discouraged  
6 appellant to attend the oral argument hearing. The masters Findings and  
7 Recommendations issued within days after the hearing in question and  
8 had recommended dismissal including dismissal applied for by Summary  
9 Judgment in which the defendant had submitted fraudulent affidavit and  
10 appellant had objected to it by affidavit and Statement of Reason and  
11 Authority also mentioned in the hearing. Findings and Recommendations  
12 did not show appellants objections.

13 Before the 10c FRAP proceeding could be concluded the Court of Appeals  
14 issued their ruling dismissing appellants Motion for rehearing.  
15 Subsequently hereto appellant moved for review of fact finding  
16 proceedings in District Court, dtd Sept 11, 1982.  
17

18 STATEMENT OF THE CASE

19  
20 The facts of the case underlying this appeal are the following:  
21 The West Linn School District in Concert with the State of Oregon  
22 had used foreign made movies as instructional material for the specific  
23 purpose of "Americanizing" appellants children during the period between  
24 1968 and 1980, the years in which the children attended West Linn High.  
25 Appellant is a german born U.S. Citizen since 1964, was raised in  
26 Germany between 1926 and 1945 and was member of the german armed forces

1 generally referred to by the press and school over the last 40 years  
2 as "Nazi" armed forces and had worked for appr. 10 years from 1945 -  
3 1955 for the American Army in Germany before coming with his family  
4 to the U.S. in 1955.

5 The movies complained of depicted "Germans" by their nature and  
6 traditional practice of christianity as enemies of Jews and of America.  
7 The practice apparently was continued until appellants daughter left  
8 the High School as affidavit of witness shows which had been submitted  
9 with (CR 85) in support of Motion for Rehearing which had been denied.

10 The witness a Mr. Gerry Jewkes in his affidavit is stating that he  
11 had witnessed a young attending West Linn High saying "that West Linn  
12 High is teaching as if all Germans where enemies of the U.S. or words  
13 to that effect" The affidavit is dated Aug 29, 1981.

14 Appellant also had discovered that his son had been given into the  
15 care of the Highschool phycologist for having taken a stand against  
16 the movie pictures and was advised according to their standards of  
17 "Americanization" of my son to seperate himself from his father for  
18 the sake of his future in America.

19 Over a period of years appellant had protested before the School-  
20 board and having not allowed appellant to have an imput on the subject  
21 of "Holocaust" and collective guilt of all germans. An attempt to address  
22 the teachers of the School also had been denied. In the meantime  
23 appellant had introduced press releases (british and american) suggestin,  
24 that the "Holocaust" stories are a hoax which I had been convinced a  
25 long time on account having been exposed to teachings in Hitler Germany  
26 which in no way had suggested that genecide policies would have been

1 carried out as "documented" and seen over the last 40 years in this  
2 county. Studying for years the subject appellant had found that the  
3 atrocities at the end of the war discovered by U.S. Army was the  
4 product of exellerated hate and intentional neglect of procedures  
5 for which a Mr. Eichman had been brought to trial in Israel. With  
6 (CR 38) had entered clipping from "Spotlight" a Washington weekly which  
7 claims that socalled "Gaschambers" where built by U.S. Army in Dachau  
8 Germany (West) to demonstrate how the gasing of Jews was done in eastern  
9 Europe.

10 Plaintiffs son as well as appellant on account of their religious  
11 believe that giving false witness or joining any hategroup is not only  
12 a sin but also a restrict<sup>ion</sup> on liberty and conscience as expressed in  
13 U.S. v. Holy Trinity Plaintiff and son where confronted with open  
14 hostility in the School, public School meeting and Lutheran Church  
15 which placed conditions of plaintiffs 15 year membership in that church  
16 by inquiring if plaintiff is american citizen and if he loves "jews".  
17 In a public Schoolmeeting (see letter attached to CR 38) plaintiff was  
18 threatened to advise son not to take media class because it would be  
19 worse than the movie class.

20 After appellants daughter started Highschool in 1976 appellant  
21 lectured in the Clackamas County Comm. College on the subject of "Holoco  
22 and "German collective guilt". Appellant received letter of commendation  
23 (see (CR 38) and hereafter was denied to continue lecturing

24 In 1977 before becoming permantly and totally disabled under Soc.  
25 Security on account of an heartailment he was client of the Oregon  
26 Vocational Rehabilitation Program and in December of 1977 had to face

1 a divorce and defendant Spooner, employee of the Rehab. Dept.  
2 referred appellant to def. H. Clyman to handle the divorce after  
3 appellants initial pro se work in which he was awarded temporary  
4 custody of his daughter with Court Order Jan 23, 1978. This Court  
5 had since disappeared from the file of the Court. Clyman in conspiracy  
6 with Spooner who held the same view which appellant had opposed in  
7 School used the knowledge from a phycological Analazise obtained for  
8 rehabilitation purposes and his position as county mental health advisor  
9 to refer him to the Mental Health Dept in which appellant was interrogated  
10 as to the reason for his opposition to the teachings on "Germans" in  
11 Schools and lutheran church.

12 After defendant Clyman started to work for appellant he dissuaded  
13 appellant not to take issue with the disappearance of of the 1-23-78  
14 Court Order and order from 2-10-78 pendente lite hearing in which  
15 among others the custody issue, visitation issue, attorney fees issue  
16 and issue of document in which exwife had stated that she started the  
17 divorce because of appellants politics had been ordered to be dealt  
18 with. None of the issues had been dealt with. On Feb 5, 1978 appellant  
19 was unlawfully arrested and an unlawfull criminal process was procured  
20 by the City of West Linn against appellant with trial scheduled for  
21 June 21, 1978. Clyman advised that he would not represent appellant  
22 and he stated that he had arranged with prosecuting City atty to drop  
23 the matter. Plaintiff wanted a public trial to get to the bottom  
24 of the accusations and for this reason had subpeaned Clyman for him  
25 to testify why the arrangements were made to drop the case. Instead  
26 he pressured appellant as his divorce atty to sign a waiver not to

1 sue the city for malicious prosecution , abuse of process and  
2 false arrest.

3 The school, Olson, and Clyman participated in the hiding of  
4 appellants daughter from Dec. 77 - March of 1978 . Clyman by  
5 <sup>1/2</sup> willfully not bringing up the custody and visitation issue in the  
6 Feb 10, 1978 hearing and advising not to take issue with the disappearance  
7 of the Jan 23, 1978 court order, and the document showing the political  
8 cause of the divorce made out by ex-wife after she had been placed in  
9 a job with the County School authority with the help of a member of  
10 the lutheran church who used his position as supervisor in that agency  
11 to make public defamations against appellant causing appellant to  
12 make a public appearance before the County board and report the incident  
13 to the District Attorney.

14 The School participated in the hiding and defeating appellants  
15 fight for custody by removing a document from their file signed by ex-  
16 wife however recognized by appellant to have been drafted apparently  
17 by other person of lutheran church who had threatened appellant not  
18 to visit his daughter in school unless he wanted to be confronted with  
19 court order. This person was member of the school faculty. Appellant  
20 in June of 1980 requested under the provision of the fed. Family Protection  
21 Act of 74 to see all the documents in his daughters file and discovered  
22 at that point that the document which had pretended to have given custody  
23 to ex-wife by the court - in opposition to court order which had awarded  
24 temporary custody to appellant - had disappeared from the school file  
25 over which defendant Hibbard had custody and responsibility.

1      Criminal charges made against appellant by ex-wife had been dropped  
2      in Feb 10, 1978 hearing and in October of 1978 when appellant saw for  
3      the first time the Custody Report requested by him, discovered that  
4      defendant Olson had continued implying these charges by testifying  
5      in the Custody Report that appellant is "a very violent man".

6      Defendant Clyman before the divorce trial on Sept 22, 1978 advised  
7      appellant to be absent <sup>from</sup> Delinquency support hearing after payments  
8      demanded had been made and did not inform appellant that 2 Benchwarrent  
9      had been issued against appellant for civil and criminal contempt. -  
10     One before the trial date - . On Oct 26, 1978 appellant was arrested  
11     and imprisoned - unlawfully - and had to employ outside attorney to  
12     get out of prison. No bail or prompt hearing after arrest had been allow-

13     In the divorce trial Clyman dissuaded appellant not to take issue  
14     with perjury and fabricated evidence introduced by def. Robertson in  
15     conspiracy with Clyman and Oregon Judges by allowing to have the record  
16     show that \$ 1300.-- had been "drained" from bankaccount of family  
17     which had shown a balance of \$ 1500.-- when ex-wife had left appellant  
18     middle of December of 1977. Appellant had accounted for approx. 1200.--  
19     expenses for necessities in Feb 10, 1978 hearing and hereafter had  
20     taken out a personal loan from the bank to make supportpayments and  
21     continue his business. By September of 1978 - the trial date - appellant  
22     had appro. 3500.-- in the bank. Clymans knowledge of the balance  
23     and his malicious attitude caused a judge after expiration period of  
24     2 years issue new order after the case had been before the Oregon  
25     Appellate Court and turned into a judgement for \$ 1,726.06 besides  
26     attorney fees of \$ 225.--

1 Denying the equal protection under Oregon Law the Appellate Court  
2 of Oregon had awarded ex-wife Interest on 14,000.-- affirming the  
3 trial courts decree and awarded her with attorney fees in amount of  
4 \$ 750.-- and H. Clyman placed a lien on appellants real property  
5 in January of 1982 after appeals proceeding had been started in fed.  
6 Court. The amount was \$ 2,015.00 "for services as yet uncompensated"

7 Defendant Clyman, knowing in December of 1978, that appellant, would  
8 hire new attorney entered into a conspiracy with the county of Clackamas  
9 to deprive appellant of his right to contract and deny him earnings  
10 in the amount of \$ 7,118.— for executed building contracts financed  
11 by the federal government and constituting a vested property right  
12 protected by the 5th amendment of the U.S. Constitution. To assure  
13 success for their conspiracy they engaged the Oregon State Builders  
14 Board in advancing the original intend of the conspiracy against  
15 appellant - to stigmatizing, ostracize, damage the person and property  
16 of appellant.

17 Pendent jurisdiction and consolidation with State action by Clyman  
18 against appellant had been applied for in Court of Appeals. The  
19 judgement had been achieved by state action in violation of 14th amendmt  
20 depriving appellant of right to have real property issue involving  
21 attorneys lien be litigated in county were real property is located.

## SUBSTANTIALLY OF FEDERAL QUESTION

This appeal presents important and substantial questions, as herein after described, in that in violation of federal statute 28-1331 and 28-1343, Civil Rights Acts of 1866, 1871, 1964 and 1968 (42-1981, 42-1982, 42-1983, 42-1985 and 42-1986 and 42-2000a 1)

1) The West Linn School District violated fed statute 42-1983 and 1985 having conspired to stigmatize, ostracize and in conjunction hereto denied liberty and property to appellant in conspiracy with the other defendants in the case and in fed civ. 81-466 AC 82-3474 and and 81-425 AC 81-3613 which are protected by the 1st, 4th, 5th, 6th 7th, 9th and 14th amendment to the Constitution of the United States. The violations constituting "state action" protected the 14th Amendment and actions under color of state law in violation of 42-1983 purposefully assisted by privat persons including pastor of West Linn Lutheran Church, a former member of the Schoolboard, who participated in the establishment of a Oregon Religion of Secularism practiced in the West Linn Schools and have disadvantaged appellant children over children believing in secularism (see case p 4, line 3) and pastor hereafter had placed on appellant conditions on a continued membership in the Lutheran Church. ( see case p 4 , line 4)

The violations under 42-1985 and 1983 were continued until Dec. of 1981 by fed. Distr.Court Clerks having forged public papers to prevent appellants appeal. The matter is reported to US Attorney Turner by Criminal Complaint and Affidavit pointing to 18-241, 18-245 2000al and 18-1503 offenses as part of this case and two cases in

1 the Court of Appeals of the 9th Cir. Under 1985 the West Linn  
2 School District and its principal Hibbard by removing a document  
3 from their file belonging to a custody court proceeding in appellants  
4 divorce conspired with def. Clyman and Olsen (Olsen having had partici-  
5 (pated  
in hiding of daughter for a period of appr. 4 months) to impede  
6 justice and deny appellant the equal protection of the law. Because  
7 of the conspiracy the Jan 23, 1978 Court Order, having granted temp.  
8 custody to appellnt, had disappeared and had affected their decision  
9 in 77-12-303 - CA 13098 denying the others issues part of the 1-23-78  
10 courtorder dealing with interest on 14,000 paid by appellant under  
11 duress in the amount of \$ 1,443.80 and attorney fees paid under  
12 duress in the amount of 750.---. Acc. to case on p 3, line 7 & 10, juri-  
13 (diction  
is in the Supremecourt under the "whole case"doctrine".

14 2)For the fraud and deceit practiced by def. Clyman in conjunction  
15 with the conspiracy as outline he was awarded a judgement in the  
16 Clackamas County Court in the amount of \$ 2015.00 while the matter  
17 was up for consideration in the 9th Cir.C. of Appeals on Motion to  
18 consolidate it with this action.

19 3)Appellant had informed the Distr. Court with (CR 68) and the Appeals  
20 Court with date Mar 2, 1982 of appellant opinion that ORS 337.120  
21 is repugnant to the U.S. Constitution as applied. It is also in  
22 violation of the spirit of America which is liberty and toleration  
23 and guaranteed to all including freedom of conscience as expressed  
24 by the Supreme Court in U.S. v. Holy Trinity (case on p 3, line 17)  
25 declaring the United States a "Christian Country".

26 4)In defense of life, liberty and property appellant was unlawfully

1 arrested, imprisoned, property unlawfully seized and destroyed,  
2 and denied and appellants person injured to the point of being  
3 ostracized, inter alia, by his children and has to pay off a  
4 a judgment awarded by fraud and conspiracy in the amount of \$ 1,726.00  
5 from his only income which is Social Security Disability pay.

6

7 **ABUSE OF DISCRETION**

---

8

9 1) Denial to recognize appellants constitutional claim in the complaint  
10 made out by pro-se litigant and his understanding of the "short and  
11 plain" statement clause of FRCP, Rule 8.

12 2) Denial of leave to file amended complaint before responsive pleading  
13 under FRCP 15 and after Motion of defendant Olsen for dismissal for  
14 Lack of Subject Matter Jurisdiction (CR 32)

15 3) Denial of discovery and Motion to Produce (33)

16 4) Denial of Motion to substitute def. State of Oregon for defendant  
17 Superintendent of Public Instructions V. A. Duncan (CR 34)

18 5) Denial of recording of open court hearing of May 26, 1981 before  
19 U.S. Magistrate Juba.

20 6) Denial of fundamental right to be heard on Motions (CR 77 & 78)

21 7) Denial of Motion to Conform to Proof of Jan 29, 1982.

22 8) Ordering posting of Cost Bond stating that appeal of appellant is  
23 frivolous and not taken in good faith and ordering in collusion  
24 with Court of Appeals that correction to false Certificate of Record  
25 on Appeal will be allowed only after posting of cost bond.

26

## CONCLUSION

For the reasons stated above, appellant submits that this appeal brings before the Court substantial and important federal questions which require plenary consideration, with brief on the merits, for their resolution.

DATED: NOVEMBER 14, 1982

Respectfully submitted,  
*Mark S. Miller*  
ROLF BEITKA, In Pro Per  
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West Linn, Ore. 97068  
Telephone: (503) 657-3669

## APPENDIX A

see page 1 and 2 of Jurisdictional Statement

## APPENDIX B

Findings and Recommendations, signed by U.S. Magistrate Juba,  
showing no date of issuance (CR 47) filed June 3, 1981.  
Findings and Recommendations, signed by U.S. Magistrate Juba,  
dated July 28, 1981 (CR 76)

## APPENDIX C

Judgment dismissing action in District Court, signed by R.M.Christ,  
Clerk, dtd July 31, 1981, filed July 31, 1981 (CR 80)

## APPENDIX D

Order of Court of Appeals dismissing the appeal, showing Schroeder and Norris, Circuit Judges, no signature and filed April 1, 1982

## APPENDIX E

Order on Rehearing showing rehearing denied and issuing of mandate  
by Schroeder and Norris, Circuit Judges

## APPENDIX F

Notice of Appeal filed with 9th Circuit Court of Appeals on Sep 17, 1982

Endorsed 6381  
Filed 6381  
ROBERT M. CHRIST, CLERK  
By DE Ready

1

2

3

10

7

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

10 ROLF BETKA, )  
11 Plaintiff, )  
12 v. ) Civil No. 81-67  
13 STATE OF OREGON, Richard B. ) FINDINGS AND  
14 Spooner, Howard Clyman, ) RECOMMENDATION  
15 Douglas S. Robertson, Gary R. )  
16 Olson, BOARD OF EDUCATION OF )  
WEST LINN SCHOOL DISTRICT NO. )  
3 J and Larry G. Hibbard, )  
Defendants. )

17 This is an action brought by a pro se plaintiff, Rolf  
18 Betka, in which he invokes this court's civil rights jurisdiction  
19 pursuant to 28 U.S.C. § 1333. He alleges that the defendants  
20 conspired to deprive him of his civil rights in violation  
21 of 42 U.S.C. § 1985 and that they acted under color of state  
22 law to deprive him of his civil rights in violation of 42 U.S.  
23 § 1983.

24 All defendants but one have now moved to dismiss. The  
25 remaining defendant has moved for summary judgment. I conclud  
26 that the action should be dismissed and summary judgment enter  
27 as to defendant Spooner.

## THE COMPLAINT

29                   The following are named as defendants in this action:  
30                   (1) the State of Oregon; (2) Richard B. Spooner, plaintiff's  
31                   counselor at the Department of Vocational Rehabilitation; (3).  
32                   // /

1 Howard Clyman, plaintiff's attorney in a divorce action; (4)  
2 Douglas S. Robertson, another attorney; (5) Gary R. Olson,  
3 the pastor of the American Lutheran Church in West Linn; (6)  
4 The Board of Education of West Linn School District; and (7)  
5 Larry G. Hibbard, principal of West Linn High School. Plaintiff  
6 alleges generally that defendants conspired to deprive him of  
7 rights to life, liberty and engaging in commerce by discouraging  
8 him from doing business in West Linn and Clackamas County,  
9 Oregon. He alleges that defendants violated his rights under  
10 the first, fourth, fifth, sixth, ninth, tenth, thirteenth and  
11 fourteenth amendments to the Constitution. He also alleges  
12 that defendants Spooner and Clyman conspired to conceal violations  
13 of the Supremacy Clause.

14 In addition to these very general allegations of Constitutional  
15 violations, plaintiff makes a number of slightly more  
16 specific allegations: (1) abuse of the small claims court of  
17 Clackamas County; (2) altering contracts between plaintiff and  
18 Clackamas County plus disparaging his business; (3) allowing  
19 lawyers in Clackamas County to be a "privileged class"; (4)  
20 denying equal "utilization" of Oregon statutes; (5) allowing  
21 an unconstitutional employment policy to go unchallenged; (6)  
22 allowing attorneys to operate with state support without re-  
23 vealing this to the public; (7) allowing the Clackamas County  
24 District Attorney to abuse his discretion in deciding whom to  
25 prosecute; (8) allowing West Linn High School to alienate  
26 plaintiff from his children by engaging in "undocumented teach-  
27 ings"; and (9) allowing malicious statements by a clergyman  
28 to be treated as privileged and suppressing plaintiff from  
29 questioning the clergyman about these statements. No defendant  
30 is specifically linked with any of these allegations.

31 Finally, plaintiff alleges that defendant Spooner referred  
32 him to defendant Clyman for legal advice in connection with

1 his divorce. He alleges that the referral was made in order  
2 to conceal violations of the Supremacy Clause. This alleged  
3 conspiracy between Spooner and Clyman was allegedly carried  
4 out by Clyman's "willingness to preserve the status quo by  
5 using his positions as attorney and advisor to discredit plai-  
6 tiffs [sic] character and reputation after profittaking [sic]  
- in the divorce."

## THE STATE OF OREGON

9                   The State of Oregon moves to dismiss on the ground that  
10                  it is immune from liability by virtue of the eleventh amendment  
11                  This is correct. See, Quern v. Jordan, 440 U.S. 332 (1980).  
12                  Furthermore, a state is not a person for purposes of either  
13                  § 1983 or § 1985. Id.; Alabama v. Pugh, 438 U.S. 781 (1978).  
14                  For these reasons, the State of Oregon's motion to dismiss  
15                  the action should be granted.<sup>1</sup>

MOTIONS TO DISMISS THE SECTION 1985 CLAIMS

17 A pro se plaintiff is given wider latitude in drafting  
18 a complaint than one represented by an attorney.

19 [A] pro se complaint, "however inartfully  
20 pleaded" must be held to "less stringent  
21 standards than formal pleadings drafted by  
22 lawyers" and can only be dismissed for  
failure to state a claim if it appears  
"beyond doubt that the plaintiff can prove  
no set of facts in support of his claim  
which would entitle him to relief."

23       Estelle v. Gamble, 429 U.S. 97, 106 (1976), quoting Haines v.  
24       Kerner, 404 U.S. 519 (1972). Applying this standard, I can  
25       conceive of no set of facts which plaintiff could prove in  
26       support of either his § 1985 claims or his § 1983 claims which  
27       would entitle him to relief.

28 Section 1985(1) prohibits conspiracies designed to inter-  
29 fere with anyone taking or discharging a federal office.

<sup>1</sup> Plaintiff has moved to substitute as a defendant Verne A. Duncan, Oregon Superintendent of Public Instruction, for the State of Oregon. This motion should be denied since the action should be dismissed in its entirety.

1 Plaintiff makes no allegations that any defendants conspired  
2 against him in this way. Plaintiff has thus made no claims  
3 under § 1985(1).

4 Sections 1985(2) and 1985(3) require that the alleged  
5 conspiracy must be motivated by an invidiously discriminatory  
6 class-based animus. Hahn v. Sargent, 523 F.2d 461 (1st Cir.  
7 1975). In other words, the alleged conspiracy must be directed  
8 at the plaintiff because he is a member of a class. Plaintiff  
9 has not alleged that the alleged conspiracy was motivated by  
10 a class-based animus. He has not even alleged membership in  
11 any class. In fact, if anything, he has alleged that the  
12 defendants were motivated by a personal vendetta against him.  
13 Because there is absolutely no indication of a class-based  
14 animus motivating the alleged conspiracy, plaintiff's claims  
15 based on § 1985 should be dismissed.

16 MOTIONS TO DISMISS THE SECTION 1983 CLAIMS

17 Section 1983 requires that the defendant acted under  
18 color of state law. Life Insurance Co. v. Reichardt, 591 F.2d  
19 499 (9th Cir. 1979). Plaintiff has failed to allege that  
20 defendants Clyman, Robertson and Olson acted under color of  
21 state law. Defendant Robertson is named in the complaint as  
22 an attorney. He is not linked with any allegations in the  
23 complaint other than the very general one that he is somehow  
24 a member of the conspiracy against the plaintiff. There are  
25 certainly no indications that Robertson acted in any way under  
26 color of state law. The § 1983 action against Robertson  
27 should be dismissed.

28 Defendant Clyman is alleged to have represented plaintiff  
29 in his divorce proceedings. This is the only allegation against  
30 Clyman which could be construed as alleging that he acted under  
31 color of state law. However, services performed by an attorney  
32 in connection with a lawsuit do not constitute actions under

1 color of state law. Dyer v. Rosenberg, 434 F.2d 648 (9th C.  
2 1970). The § 1983 action against Clyman should be dismissed.

3 Defendant Olson is alleged to be the pastor of the Americ  
4 Lutheran Church. The only specific allegation in the complain  
5 to which he might be linked is the one which charges that the  
6 members of the conspiracy allowed a minister's malicious state  
7 ments to be "treated as privileged information." This simply  
8 does not constitute an allegation that Olson acted under color  
9 of state law. The § 1983 action against Olson should be dis-  
10 missed.

11 Defendants Hibbard and West Linn School District may be  
12 said to have acted under color of state law since the complain  
13 may be construed to say that Hibbard was acting in his officia  
14 capacity as principal of West Linn High School when he alleged  
15 ly engaged in the conspiracy against plaintiff. The School  
16 Board as a subdivision of the State could, of course, only  
17 act in an official capacity. However, unlike the State or its  
18 agencies, a municipal corporation such as a school district  
19 is a person for purposes of § 1983. Monell v. Department of  
20 Social Services, 436 U.S. 658 (1978).

21 However, despite the fact that plaintiff has alleged that  
22 Hibbard and West Linn School Board acted under color of state  
23 law, he has failed to state a claim. His only allegation which  
24 may be construed as being against Hibbard or the School Board  
25 is:

26 Allowing the local West Linn School thru [sic]  
27 a policy of the Board of Education engage in  
28 undocumented teachings and having denied [sic]  
29 plaintiffs [sic] contribution and discussion  
30 hereto based on documented evidence resulting  
in an alienation of plaintiff from his child-  
ren for the sake of "conformity" and following  
the advise [sic] of the Counseling Dept. of  
the West Linn High School to assure a better  
future in America for the children.

31 Complaint at 4.

32 Section 1983 provides for protection of "rights, privilege

1 or immunities secured by the constitution and laws." 42 U.S.  
2 § 1983. The allegation against Hibbard and the School Board  
3 does not state a claim for violation of any rights, privilege  
4 or immunities secured by either the Constitution or federal  
5 law. At best, plaintiff has stated a claim for alienation of  
6 his children's affection. This is not a claim cognizable under  
7 federal law or the Constitution. For this reason, plaintiff's  
8 § 1983 action against Hibbard and West Linn School Board should  
9 be dismissed.

10 MOTION FOR SUMMARY JUDGMENT

11 Unlike the other defendants, defendant Spooner has moved  
12 for summary judgment. He has filed an extensive affidavit in  
13 support of this motion. Plaintiff has countered with an affi-  
14 davit of his own. On the basis of the pleadings and these  
15 affidavits, I conclude that summary judgment should be granted  
16 in favor of defendant Spooner.

17 Of all defendants named in plaintiff's complaint, Spooner  
18 is the most conspicuous. He is alleged to have been plaintiff's  
19 counselor at the Department of Vocational Rehabilitation.  
20 Spooner allegedly informed plaintiff of the legal impact on  
21 his divorce proceedings of some medical condition which plain-  
22 tiff possessed. Plaintiff also alleges that Spooner was aware  
23 at that time of an employment policy of Clackamas County  
24 Educational Service District and the effect of certain teaching  
25 on plaintiff's children which plaintiff's wife thought were  
26 major points in the divorce. Spooner then referred plaintiff  
27 to attorney Clyman. He allegedly knew that Clyman was an ad-  
28 visor for the Human Resource Department of Clackamas County.  
29 The referral to Clyman was allegedly made for the purpose of  
30 concealing violations of the Supremacy Clause.

31 I note that these allegations fail to state a claim under  
32 § 1985 because there is no allegation that whatever conspirac-

1      Spooner was allegedly a part of was motivated by a class-based  
2      animus. I also note that they fail to state a claim under  
3      § 1983 because there is no claim that Spooner violated any  
4      rights, privileges or immunities secured to plaintiff by either  
5      the Constitution or federal law. However, since Spooner has  
6      put the question in issue of whether he, in fact, violated  
7      plaintiff's rights while dealing with plaintiff, I will proceed  
8      to address that question.

In a motion for summary judgment the movant has the burden of showing there is no genuine issue of material fact. Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 (1970); SEC v. Murphy, 626 F.2d 633 (9th Cir. 1980). Spooner has met that burden. He has shown there is no issue of fact whether he violated any of plaintiff's rights which are secured by either federal law or the Constitution.

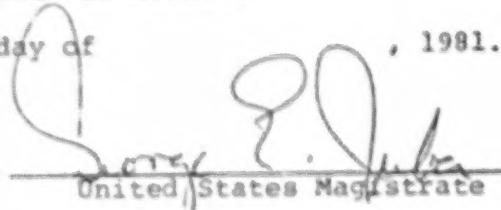
29 Plaintiff has the burden of coming forward with specific  
30 facts which show that there remains a genuine issue of fact  
31 for trial. Neely v. St. Paul Fire & Marine Insurance Co.,  
584 F.2d 341, 344 (9th Cir. 1978). Plaintiff offers his own

1 affidavit in opposition to Spooner's motion for summary judgment.  
2 His affidavit challenges various factual statements in  
3 Spooner's affidavit. However, none of the challenged statements  
4 is material. None addresses the question of whether Spooner  
5 violated plaintiff's civil rights. Even if plaintiff's version  
6 of these events are true, there is no indication that Spooner  
7 violated plaintiff's civil rights. There are no genuine issues  
8 of material fact. Spooner's motion for summary judgment should  
9 be granted.

10 CONCLUSION

11 Plaintiff's action against the State of Oregon should be  
12 dismissed. Defendant Spooner's motion for summary judgment  
13 should be granted. The action should be dismissed against all  
14 other defendants. Plaintiff's motion to substitute Verne A.  
15 Duncan as a party defendant should be denied.

16 Dated this

17 day of   
18   
19 United States Magistrate

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Endorsed 1-28-81  
Filed 1-28-81  
ROBERT M. CHRISTOPHER  
By DEB  
Deputy

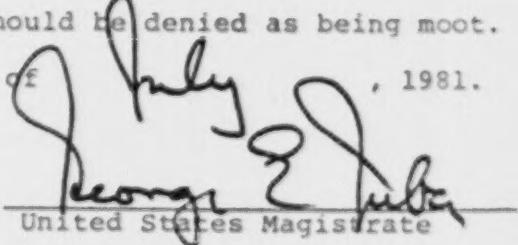
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ROLF BETKA, )  
Plaintiff, )  
v. ) Civil No. 81-67  
STATE OF OREGON, et al., ) FINDINGS AND  
Defendants. ) RECOMMENDATION

Plaintiff's motion to file an amended complaint was  
denied.

The motions to dismiss should be denied as being moot.

Dated this 28 day of January, 1981.

  
George E. Huber  
United States Magistrate

EN  
7-31

U.S. DISTRICT COURT  
DISTRICT OF OREGON  
FILED  
JUL 31 1981

ROBERT M. CHRIST, CLERK  
BY *Q6* DEPUTY

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ROLF BETKA,

Plaintiff,

vs.

STATE OF OREGON, RICHARD B.  
SPOONER, HOWARD CLYMAN, DOUGLAS  
S. ROBERTSON, GARY R. OLSON, BOARD  
OF EDUCATION OF WEST LINN SCHOOL  
DISTRICT NO. 3 J and LARRY G.  
HIBBARD.

Civ. 81-67

JUDGMENT

Defendants.

Based upon the record,

IT IS ORDERED that defendant Spooner's motion for  
summary judgment is granted and this action is dismissed.

Dated this 31<sup>ST</sup> day of July, 1981.

*Robert M. Christ*  
ROBERT M. CHRIST, CLERK

JUDGMENT

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

AUG 30 1982

ROLF BETKA, )  
vs. Plaintiff-Appellant, )  
STATE OF OREGON, RICHARD B. SPOONER, HOWARD )  
CLYMAN, DOUGLAS S. ROBERTSON, GARY R. OLSEN, )  
BOARD OF EDUCATION OF WEST LINN HIGH SCHOOL )  
DISTRICT NO. 3J, LARRY G. HIBBARD, )  
Defendants-Appellees. )

PHILLIP B. WINDLERY  
CLERK US COURT OF APPEALS  
No. 81-3611

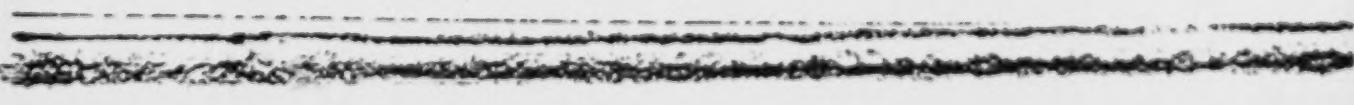
DC# CV 81-67 MJF  
Oregon (Portland)

ORDER

Before: SCHROEDER and HARRIS, Circuit Judges

Appellant's petition for rehearing of the April 1, 1982 order dismissing this appeal is denied. Even if the appeal includes the district court's order of October 27, 1981, as well as the order of September 29, 1981, previously brought to our attention, appellant's failure to post bond for appellees' costs compelled dismissal. All other pending motions are denied as moot. In accordance with the provisions of Fed. R. App. P. 41(a), the mandate shall issue immediately.

McCal 3/22/82



FILED

APR 01 1982

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

PHILLIP B. WINBERRY  
CLERK OF COURT

ROLF BETKA,	)	No. 81-3611
vs.	)	DC# CV 81-67 HJF
Plaintiff-Appellant,	)	Oregon (Portland)
STATE OF OREGON, RICHARD B. SPOONER, HOWARD CLYMAN, DOUGLAS S. ROBERTSON, GARY R. OLSEN, BOARD OF EDUCATION OF WEST LINN HIGH SCHOOL DISTRICT NO. #J, LARRY G. HIBBARD,	)	ORDER
Defendants-Appellees.	)	

Before: SCHROEDER and NORRIS, Circuit Judges

The parties' responses to the court's order of February 16, 1982, reveal that the court has no jurisdiction to review the district court's final judgment entered July 31, 1981. In the circumstances of this case, appellant's August 10, 1981 motion cannot be construed as a notice of appeal, and his August 19, 1981 motion did not toll the time for filing a notice of appeal. See Fed. R. Civ. P. 59(e); Fed. R. App. P. 4(a)(4). Accordingly, the only matter properly before the court is appellant's challenge to the district court's order of September

29, 1981, which we construe as a denial of relief under Fed. R. Civ. P. 60(b).

Appellees' motion to dismiss the appeal is granted, and the appeal is dismissed. In light of the limited scope of the appeal, the district court's January 4, 1982 order, which required appellant to post a \$6,000 cost bond, was unquestionably warranted, and appellant's failure to comply with the order compels the dismissal of the appeal.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

3 ROLF BETKA, ) CA No. 81-3611  
4 Plaintiff-Appellant, ) DC No. CV 81-67 HJF  
v. ) Oregon(Portland)  
5 STATE OF OREGON, RICHARD B. SPOONER, )  
6 HOWARD CLYMAN, DOUGLAS S.ROBERTSON, )  
7 GARY R. OLSEN, BOARD OF EDUCATION )  
OF WEST LINN SCHOOL DISTRICT NO. 3J, )  
and LARRY G. HIBBARD, )  
8 Defendant-Appellees. )

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Rolf Betka the plaintiff above named, hereby appeals to the Supreme Court of the United States from the final order denying rehearing from April 1, 1982 order dismissing the appeal entered in this action on August 20, 1982.

This appeal is taken pursuant to Title 28, United States Code, Section 1252, 1257(2) and 1651.

18 DATED: September 15, 1982

WOLF BETKA, In Pro Per  
19886 S. White Cloud Circle  
West Linn, Ore. 97068  
Telephone: (503) 657-3669

RECEIVED  
PHILLIP B. WINGARD  
CLEAN & COUNTER-  
SEP 17 1982  
FILED  
DECREDDED  
9/17/82  
DATE  
9/17/82  
per

**AFFIDAVIT OF SERVICE**

STATE OF OREGON )  
 )  
 County of Clackamas )

I, Rolf Betka, the plaintiff-appellant in this case, being first  
duly sworn deposes and says:

8 On September 15, 1982, a true and correct copy of the foregoing  
9 NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES was served  
10 on the following individuals by depositing same in the United states  
11 mail in Lake Oswego, Ore., enclosed in a sealed envelope with postage  
12 thereon fully prepaid and addressed as follows:

T.D. Norwood  
Asst Attorney General  
505 Pacific Bldg  
520 SW Yamhill Street  
Portland, Ore. 97204

Attorney for State of Oregon  
and R.B. Spooner

R. Erick Johnson  
1000 Willamette Center  
Portland, Ore. 97204

Attorney for H.Clyman and G.R.  
Olsen

Lang, Klein, Wolf, Smith,  
Griffith & Hallmark  
One SW Columbia, Suite 800  
Portland, Ore. 97258

Attorneys for D.S. Robertson

Hibbard, Caldwell, Bowerman  
Schultz and Herrert  
P.O. Box 607, Oregon City, Or  
Solicitor General, Dept of  
Justice, Washington DC 20530

Attorneys for West Linn School  
District and L.G. Bibbard  
97045

This affidavit of Service is made according to Supreme Court Rule 10 and 28 and with the additional following statement:

1 Plaintiff-Appellant Rolf Betka persuant to Title 28 USCA,  
2 Section 2403 (a) and (b)-besides State of Oregon and one State  
3 Official beeing a party the clerk of the U.S. District Court for  
4 Oregon and one unknown official of the 9th Cir.Court of Appeals  
5 have interfered- has drawn the validity of Oregon Statutes in question  
6 by having given "Notification of Unconstitutionality" to both courts  
7 involved and it appears that they have not certified it to the U.S.  
8 Attorney General or to the Attorney General of the State of Oregon.

9 Charges of denial of due process by both courts are part of the  
10 reason for the appeal. Falsification of the Certificate of Record of  
11 Appeal was covered up by denying plaintiff-appellant a hearing made  
12 under FRAP 10 (e) in the 9CA to allow the Distr. Court to rule on it  
13 resulting in Distr.Court order stating .. to pay Cost bond or no  
14 correction would be allowed. The charges of falsification had been  
15 submitted to the 9th Cir.Court. The Clerk of the Distr. Court had  
16 employed at least 2 ducketclerks who had made intentional false  
17 entries to cover up the insufficient fact finding process used and  
18 the denial of at least one hearing. The order by the District Court of co  
19 used by the 9th Cir. to deny jurisdiction was issued approx. two months  
20 after the Notice of Appeal and stated that the appeal is taken in bad  
21 faith when as a matter of fact the same judge and magistrate involved  
22 where the ones having denied due process and fairness. In addition  
23 a proceeding under FRAP 10(c) entered in the Court of Appeals -  
24 to restore the omitted oral argument hearing - and under Title 28-455  
25 was not allowed.

26 Affiant is competant to testify to these facts known to be true and is  
Page willing to produce the listed documents.

2 of 2 Sworn to before me, Sept 15, 1982  
Notary Public of Oregon, my commission expires:

*Attala, 11/1/1982*

**Office Supreme Court, U.S.**

**F I L E D**

DEC 18 1982

ALEXANDER L. STEVENS,  
CLERK.

IN THE SUPREME COURT OF THE UNITED STATES

ROLF BETKA, )  
Plaintiff-Appellant, )  
vs. )  
STATE OF OREGON, RICHARD B. )  
SPOONER, HOWARD CLYMAN, )  
DOUGLAS S. ROBERTSON, GARY R. )  
OLSEN, BOARD OF EDUCATION OF )  
WEST LINN HIGH SCHOOL )  
DISTRICT NO. 3J, and LARRY G. )  
HIBBARD, )  
Defendants-Appellees. )  
No. 82-5754  
ON APPEAL FROM THE UNITED  
STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
MOTION TO DISMISS OR AFFIRM  
TERM: OCTOBER 1982

DONALD B. BOWERMAN  
1001 Molalla Avenue, Suite 200  
Post Office Box 667  
Oregon City, Oregon 97045  
(503) 656-5207

Of Attorneys for Defendants-  
Appellees West Linn High School  
District No. 3J and Larry G.  
Hibbard

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I      Procedural Background . . . . .	1
II     The Proceeding is Frivolous . . . . .	2
III    There is a Defect in Jurisdiction . . . . .	2
IV    Conclusion . . . . .	3

TABLE OF AUTHORITIES

	PAGE
<u>FEDERAL STATUTES</u>	
28 USC § 1252 . . . . .	2
<u>RULES OF COURT</u>	
Supreme Court Rule 16 . . . . .	1

Appellees, West Linn High School District No. 3J and Larry G. Hibbard, move the Court for an order dismissing the appeal herein or in the alternative to affirm the order of the United States Court of Appeals for the Ninth Circuit pursuant to Supreme Court Rule 16.

I

PROCEDURAL BACKGROUND

Plaintiff filed his complaint on or about January 22, 1981 presumably attempting to allege a variety of claims for violation of his civil rights. Defendants responded with motions to dismiss for failure to state a cause of action or motion for summary judgment. Plaintiff filed additional documents. Magistrate Juba entered Findings and Recommendations recommending one defendant be granted summary judgment and that plaintiff's action be dismissed as to the other defendants including West Linn School District No. 3J and Larry G. Hibbard.

Plaintiff filed additional documents including objection to the Findings and Recommendations of June 24, 1981. The objections claimed both a conspiracy and violations of plaintiff's rights.

On July 30, 1981, United States District Judge Helen J. Frye entered an order consistent with Magistrate Juba's recommendations dismissing plaintiff's action.

Numerous documents requesting reconsideration and rehearing were filed by plaintiff. All of them were denied. Plaintiff filed a notice of appeal to the Ninth Circuit Court of Appeals on October 27, 1981.

On January 4, 1982, Judge Frye ordered plaintiff to file cost bonds on the ground that his appeal was deemed frivolous and not in good faith. Plaintiff filed further documents in both the

District and Appellate Courts. A number of the defendants moved to dismiss plaintiff's appeal. On February 16, 1982, the Ninth Circuit Court of Appeals ordered the parties to submit statements discussing the Ninth Circuit's jurisdiction over the appeal. The Court of Appeals then ordered dismissal of plaintiff's appeal on the grounds that the appeal had not been timely filed and plaintiff had failed to file the necessary cost bonds.

## II

### THE PROCEEDING IS FRIVOLOUS

The allegation directed against West Linn High School District No. 3J and Larry G. Hibbard, Principal of West Linn High School, appears to contend that the School District, by engaging in "undocumented teachings" alienated the plaintiff from his children.

Magistrate Juba found that the allegation against Hibbard and the School District did not state a claim for violation of any rights, privileges or immunities secured by either the Constitution or Federal Law and that alienation of children's affection was not a claim that could be brought under either Federal Law or the Constitution.

## III

### THERE IS A DEFECT IN JURISDICTION

Appellant invokes the jurisdiction of this court under 28 USC § 1252 which provides:

"any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States, \* \* \* holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee is a party."

While there was a final order of the court of the Ninth

Circuit Court of Appeals, there was no order from any court holding any Act of Congress unconstitutional. Further, neither the United States or any agencies, or any officer or employee thereof was a party to appellant's complaint.

IV

CONCLUSION

Appellees West Linn High School District No. 3J and Larry Hibbard respectfully request the court to dismiss plaintiff's appeal or to affirm the Ninth Circuit Court of Appeals' order for the following reasons:

1. Appellant failed to state a claim for relief in the District Court;
2. This entire proceeding is frivolous;
3. His appeal was properly dismissed by the Ninth Circuit Court of Appeals on the grounds that it had not been timely filed and appellant had failed to file a cost bond as ordered by the District Court;
4. The jurisdiction invoked by appellant does not apply to the case at hand.

HIBBARD, CALDWELL, BOWERMAN,  
SCHULTZ & HERGERT

By /s/ Donald B. Bowerman  
Donald B. Bowerman OSB# 59011  
Of Attorneys for Defendants  
West Linn School District No. 3J  
and Larry G. Hibbard

IN THE SUPREME COURT OF THE UNITED STATES

ROLF BETKA, )  
Plaintiff-Appellant, )  
v. ) No. 82-5754  
STATE OF OREGON, RICHARD B. )  
SPOONER, HOWARD CLYMAN, )  
DOUGLAS S. ROBERTSON, GARY R. )  
OLSEN, BOARD OF EDUCATION OF )  
WEST LINN HIGH SCHOOL )  
DISTRICT NO. 3J, and LARRY G. )  
HIBBARD, )  
Defendant-Appellees. )  
STATE OF OREGON )  
County of Clackamas ) ss.

I, DONALD B. BOWERMAN, being first duly sworn, depose and say:

I am one of the attorneys for defendants-appellees West Linn School District No. 3J and Larry G. Hibbard.

On November 16, 1982, plaintiff-appellant's Jurisdictional Statement was received by me.

On December 15, 1982, a true and correct copy of the foregoing Motion to Dismiss or Affirm was served on each of the following individuals by depositing same in the United States mail in Oregon City, Oregon, enclosed in a sealed envelope with postage thereon fully prepaid and addressed as follows:

T. D. Norwood  
Assistant Attorney General, State of Oregon  
505 Pacific Building  
520 SW. Yamhill Street  
Portland, Oregon 97204

Of Attorneys for Respondents-Appellees  
State of Oregon and Richard B. Spooner

R. Erick Johnson, Esq.  
1000 Willamette Center  
Portland, Oregon 97204

Of Attorneys for Respondents-Appellees  
Howard Clyman and Gary R. Olsen

Emil R. Berg, Esq.  
One SW. Columbia  
Portland, Oregon 97204

Of Attorneys for Respondent-Appellee  
Douglas S. Robertson

Rolf Betka, In Pro Per  
19686 S. White Cloud Circle  
West Linn, Oregon 97068

Plaintiff-Appellant

/s/ Donald B. Bowerman  
DONALD B. BOWERMAN

SUBSCRIBED AND SWORN to before me this 15th day of December,  
1982.

/s/ Paddy K. Reddaway  
Notary Public for Oregon  
My Commission Expires: 11/22/85

*G-cw*  
**ORIGINAL**

RECEIVED

DEC 14 1982

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

1 IN THE SUPREME COURT OF THE UNITED STATES

2 ROLF BETKA,

3 Plaintiff-Appellant,

4 ) No. 82-5754  
5 v. )  
6 STATE OF OREGON, RICHARD B. SPOONER, )  
7 HOWARD CLYMAN, DOUGLAS S. ROBERTSON, )  
8 GARY R. OLSEN, BOARD OF EDUCATION OF )  
9 WEST LINN HIGH SCHOOL DISTRICT NO. 3J, )  
10 LARRY G. HIBBARD, )  
11 )  
12 Defendants-Appellees. )

13 On appeal from the United States Court of Appeals

14 for the Ninth Circuit

15 MOTION TO DISMISS OR AFFIRM

16 Appellee Douglas S. Robertson moves the Court to  
17 dismiss the appeal herein or, in the alternative, to affirm  
18 the Order of the United States Court of Appeals for the Ninth  
19 Circuit on the ground it is manifest that plaintiff did not  
state a claim for relief, the Court of Appeals acted properly  
in dismissing his appeal, and plaintiff has not properly invoked  
the jurisdiction of this Court.

20 The insubstantiality of plaintiff's appeal is suc-  
21 cinctly and clearly shown by examination of the major pleadings  
22 and orders contained in the record.

23 In summary, on or about January 22, 1981, plaintiff  
24 filed his complaint, attempting to allege a variety of confusing  
25 claims for violation of his civil rights. After responses by  
26 defendants, and filing of additional documents by plaintiff,

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1 Magistrate Juba, on June 3, 1981, entered an 8-page "Findings  
2 and Recommendation," recommending one defendant be granted summary  
3 judgment and that plaintiff's action be dismissed as to the  
4 other defendants. Magistrate Juba's recommendation, as he  
5 discussed, was based upon a number of critical jurisdictional  
6 defects in plaintiff's claims.

7 Subsequently, in addition to filing a number of  
8 other documents, including an attempt to have his case design-  
9 nated as a "complex case," plaintiff filed "Objections to  
10 Findings and Recommendations." That June 24, 1981, document  
11 cannot be fairly summarized, beyond the fact it is a jumble  
12 of allegations regarding conspiracy and numerous violations of  
13 plaintiff's rights. In spite of plaintiff's objections, on  
14 July 30, 1981, United States District Judge Helen J. Frye entered  
15 an Order consistent with Magistrate Juba's recommendations.

16 Plaintiff filed numerous documents requesting re-  
17 consideration and rehearing, which were denied. He finally  
18 filed a notice of appeal to the Ninth Circuit Court of Appeals  
19 on October 27, 1981.

20 Pursuant to a January 4, 1982, Order by Judge Frye,  
21 plaintiff was directed to file cost bonds, on the ground his  
22 appeal was deemed frivolous and not in good faith. Plaintiff  
23 filed a flurry of documents in both the District and Appellate  
24 Courts, seeking, among other things, rehearing, consolidation  
25 with one of his other lawsuits, and disqualification of Judge  
26 Frye. Meanwhile, a number of the defendants moved to dismiss

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1 plaintiff's appeal. On February 16, 1982, the Ninth Circuit  
2 Court of Appeals issued an Order directing the parties to  
3 submit statements discussing the Appellate Court's jurisdiction  
4 over the appeal. Following submission of those statements,  
5 the Court of Appeals ordered dismissal of plaintiff's appeal,  
6 both on the ground it had not been timely filed, and on the  
7 ground plaintiff had failed to file the necessary cost bonds.

8 In conclusion, the record clearly shows:

9 1. Plaintiff failed to state a claim for relief  
10 in the District Court;

11 2. His appeal was properly dismissed by the  
12 Ninth Circuit Court of Appeals;

13 3. Plaintiff has not stated a proper basis for  
14 this Court's jurisdiction; and

15 4. This entire proceeding is frivolous.

16 Therefore, this Court should dismiss plaintiff's  
17 appeal, or affirm the Ninth Circuit Court of Appeals' Order  
18 which dismissed it at that level.

19 Respectfully submitted,

20 WOLF, GRIFFITH, BITTNER, ABBOTT  
21 & ROBERTS

22 By: Emil R. Berg

23 Emil R. Berg  
24 Of Attorneys for Defendant  
25 Douglas S. Robertson

**CERTIFICATE OF MAILING**

I hereby certify that I served the foregoing Motion to Dismiss or Affirm on the following:

Mr. Rolf Betka  
19886 South White Cloud Circle  
West Linn, Oregon 97068

plaintiff,

Mr. William F. Gary  
Solicitor General  
Department of Justice  
100 State Office Building  
Salem, Oregon 97310

attorney for Defendants State of Oregon and Richard B. Spooner;

Messrs. Frank A. Moscato  
and R. Erick Johnson  
1000 Willamette Center  
Portland, Oregon 97204

attorneys for Defendant Clyman;

Messrs. Ronald E. Bailey  
and S. Joel Wilson  
1000 Willamette Center  
Portland, Oregon 97204

attorneys for Defendant Olsen; and

Ms. Nancy S. Tauman  
710 Center Street  
Oregon City, Oregon 97045

attorney for Defendants West Linn High School District No. 3J and Larry G. Hibbard; on December 10, 1982, by mailing to each individual a true copy thereof, certified by me as such, contained in a sealed envelope, with postage paid,

111

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WOLF, GRIFFITH, BITTNER, ABBOTT & ROBERTS  
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1 addressed to said individuals at their last known addresses,  
2 as stated above, and deposited in the post office at Portland,  
3 Oregon on said day.

4 DATED this 10th day of December, 1982.

5 WOLF, GRIFFITH, BITTNER, ABBOTT  
6 & ROBERTS

7 By: Emil R. Berg  
8 Emil R. Berg  
9 Of Attorneys for Defendant  
10 Douglas S. Robertson

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